

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

FRANK ANTONIO SPENCER, :  
Plaintiff, : NO. 1:11-CV-00142  
: :  
v. : **OPINION AND ORDER**  
: :  
ODRC DIRECTOR ERNIE MOORE, et al., :  
Defendants.

This matter is before the Court on the Magistrate Judge's Order, Report and Recommendation, (doc. 5), to which no objections were filed.

This is an excessive force case brought against several corrections officers, the director of the Ohio Department of Rehabilitation and Correction ("ODRC") and the Southern Ohio Correctional Facility ("SOCF") Warden (doc. 3). The Magistrate Judge conducted a sua sponte review of the complaint and determined that Plaintiff failed to state a claim for relief against the ODRC Director and the SOCF Warden because he did not present any factual allegations supporting a direct claim against them, and a claim based on respondeat superior is not permissible under 42 U.S.C. § 1983, the statute under which Plaintiff seeks relief (doc. 5).

Having reviewed this matter pursuant to 28 U.S.C. §636(b), the Court finds no clear error on the face of the record

and agrees with the position taken by the Magistrate Judge. See Advisory Committee Notes to Fed. R. Civ. P. 72; Thomas v. Arn, 474 U.S. 140, 150(1985) ("It does not appear that Congress intended to require district court review of a magistrate judge's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings"). Accordingly, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation in its entirety (doc. 5) and therefore DISMISSES Defendants Ernie Moore and Donnie Morgan from this matter.

SO ORDERED.

Dated: April 7, 2011

/s/ S. Arthur Spiegel  
S. Arthur Spiegel  
United States Senior District Judge